IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION.
CHAMBER SUMMONS NO. 1452 OF 2005.

IN

SUIT No.3026 of 2005.

Smt.Hirabai N. Tikare [since deceased] Mahesh N. Tikare and Anr. **..Plaintiffs.**

V/s.

Mr.Vishnu Baburao Tikare **..Defendant.**

Mr. P. R. Kadam for plaintiffs.

Mr. P. V. Tikare for defendant.

CORAM:S.C.DHARMADHIKARI,J.

DATED: 24th July, 2006.

P.C.:-

1] The plaintiffs have filed a suit where they claim a decree for possession of the suit premises which is a room. The suit was originally filed in the Small Causes Court at Bombay and numbered, as L.E. Suit No. 64/77 of 1992.

2] In the light of the law declared by this Court, the Court of Small Causes directed that the plaint be returned for presentation to the

City Civil Court. Accordingly the Suit was presented to the City Civil Court,Bombay and was numbered, as S.C.Suit No. 4200/02.

3] Lateron, it transpires that the City Civil Court had no pecuniary jurisdiction to entertain and try the suit and, therefore, plaint was directed to be returned for presentation in this Court/appropriate Court.

4] The plaint is accordingly presented and the Suit is numbered, now, as Suit No. 3026 of 2005.

5] During the prolonged litigation from 1992 till today, it transpires that the defendant to this suit has also filed a suit in this Court being Suit No. 116 of 2003. In that Suit the prayer is made that the defendant is 50% owner of the suit premises and directions be issued so as to give him that share.

6] All that, plaintiff desires to incorporate are, these subsequent events,

namely the filing of the suit by the defendant for the aforesaid reliefs. He contends that suit No.116 of 2003 cannot be decreed because the claim is not bona fide and honest. Based upon such averments, the relief of injunction and inter-locutory reliefs including appointment of Receiver are being claimed.

7] I see no prejudice being caused to the defendant because no change in cause of action accrues, inasmuch as, the suit remains a suit for possession based on title. If the suit filed by the defendant is taken cognizance of and is sought to be decreed, even then plaintiff's share in the suit premises has to be protected. In such circumstances, no prejudice would be caused to the parties. The submissions are common. The controversy between them would be common. Instead of the plaintiffs filing another suit, now, in the light of pendency of the Suit of the defendant if the plaint is allowed to be amended, it would avoid multiplicity of proceedings.

8] Needless to state that amendments being

allowed to be incorporated and reliefs claimed on that basis do not mean that there is any adjudication with regard thereto. All contentions of the defendant including maintainability and Limitation are kept open.

Interest of Justice will be further subserved if it is directed that suit No. 3026 of 2005 and 116 of 2003 be tried together.

9] Chamber Summons No.1452 of 2005 is made absolute accordingly in terms of prayer clause (a). Amendments to be carried within a period of two weeks from today. Copy of amended plaint to be served on the defendant within two weeks thereafter.

10] No order as to costs.

[S.C. DHARMADHIKARI,J]